shareholders upon inquiry as to how many directors were interested and to what extent. This is the general rule. (*Gale* v. *Morris*, 3 Stew. 285; *Haslett* v. *Stephany*, 10 Dick. 68; *Phosphate Lime Co.* v. *Green*, 7 C. P. 43; *Doran* v. *Dazey*, 5 N. Dak. 167, 57 Am. St. R. 550; *Wishard* v. *Hansen*, 99 Ia. 307, 61 Am. St. R. 238).

4. In this case the plan to retire the stock did not receive a two-thirds vote, without counting the shares of those interested in the syndicate. *Held*, that in the shareholders' meeting, the directors were entitled to vote upon the resolution not in their fiduciary capacity, but solely in the right of the shares of stock held by them; they had a right to be influenced by what they conceived to be for their own interest, and they cannot lawfully be denied that right, nor can it be limited or circumscribed by the fact that they occupied the position of directors in the company. The court did not rely particularly upon the express provision of the by-laws that contracts in which the directors were specially interested could be ratified by a majority of shareholders. The rule applied is fully sustained by the authorities. (*Leavenworth* v. *Chicago Ry. Co.* 134 U. S. 688; *Nye* v. *Storer*, 168 Mass. 53; *Bjorngaard* v. *Goodhue Co. Bank*, 49 Minn. 483, 2 Wilgus Cas. Corp. 1596; *Shaw* v. *Davis*, 78 Md. 308, 28 Atl. 619; *Grant* v. *United Kingdom Ry. Co.* 40 Ch. D. 135; *Beatty* v. *N. W. Trans. Co.*, L. R. 12 App. Cas. 589, 12 Can. Sup. Ct. 598, 11 Ont. App. 205, 6 Ont. 300; *Windmuller* v. *Stand, Dist. etc. Co.*, 114 Fed. R. 491. Compare *Gamble* v. *Water Co.* 123 N. Y. 91; *Gage* v. *Fisher*, 5 N. Dak. 297, 31 L. R. A. 557).

PHYSICAL EXAMINATION IN PERSONAL INJURY CASES.—The supreme court of Indiana, in the recent case of *Aspy* v. *Botkins* (1903),—Ind.—, 66 N. E. Rep. 462, reaffirmed and somewhat extended its holdings upon the question of the right to compel the plaintiff in an action for personal injuries, to expose his person for examination. (See article by Mr. T. H. Shastid, 1 MICHIGAN LAW REVIEW 193, 277.) The plaintiff was a woman who complained of an injury to her knee. The defendant, upon the trial, demanded that she expose her knee for examination, in the presence of the jury, by physicians called by the defendant. The trial court, upon objection, refused to make the order. Later in the trial, the plaintiff offered to exhibit her knee to the jury. Said the court: "Where the ends of justice require it, it is the duty of the court, upon a timely application, to grant a reasonable request to have the plaintiff in a personal injury case, on the penalty of a non-suit, submit to a physical examination with reference to the injury he claims to have sustained. *City of South Bend* v. *Turner*, 156 Ind. 418, 60 N. E. 271, 54 L. R. A. 396, 83 Am. St. Rep. 200. The right is not, however, coextensive with the power of cross-examination, and some latitude of discretion must be recognized as existing in the trial court. Each case must rest on its own foundation, and the defendant who complains, upon appeal, that the trial court abused its discretion in refusing to make the order, must be able to present a case where it is plain that the request should have been granted. We are satisfied that error does not appear in the present instance, for the reason, if for no other, that it required the appellee, a woman, to make a quasi public exposure of her person. It is true that in this case the appel-

lee subsequently offered to exhibit her limb to the jury, but this did not operate to make the prior ruling improper. In announcing such ruling, the court said, 'At this present time I will not grant the request.' The motion should have been made after the appellee offered to expose her limb, to present any question."

WILLS.—REVOCATION AND REVIVAL.—There is scarcely a topic of the law on which there has been so much difference of opinion as there has been on the effect of the destruction of a will upon a prior will revoked by it. It has often been held that if the later will was merely inconsistent with the prior one, the destruction of the later permitted the former to take effect as if the later had never been made, because a will revoked is as if it had never been; but that if the later will contained an express revoking clause, the revocation was complete and immediate and not affected by the subsequent destruction of the revoking will. Other courts have held that the effect of the destruction of the later will upon the former depends in all cases on the intention of the testator in destroying to revive the earlier will or not, which may be proved by his declarations or other evidence. An entirely new theory, it would seem is advanced by the supreme court of Illinois in a recent decision, based on the ground that the statutes of that state do not authorize the revocation of wills by "other writing declaring the same." "Our conclusion is that, in as much as the later will executed by the testator must be presumed to have been destroyed by him in his lifetime, this loss or destruction has operated as a revival of the former will of Dec. 3, 1897, although the later will contained a revocatory clause." *Stetson* v. *Stetson*, (1903),—Ill.—, 66 N. E. Rep. 262.

RECENT IMPORTANT DECISIONS

AGENCY—ACTION BY UNDISCLOSED PRINCIPAL.—Plaintiff, a married woman, was erecting a building upon her own land and her husband was acting as her agent in supervising the building operations. Defendant, a roofing company, learning that the building was being erected, wrote to the husband saying that it was desirous of introducing its roof in "your town" and made an offer to put on "your roof." The husband replied in his own name accepting the offer to put on "my roof." The defendant gave to the husband a guarantee of "your roof" for a certain period. This guarantee being broken, the wife sues to receive damages upon it. *Held*, that she may maintain the action. *Abbott* v. *The Atlantic Refining Co.* (1902), 4 Ont. L. Rep. 701.

The defense was that by the use of the expressions "your roof," "my roof," etc., there was such a representation of the husband as the owner as excluded the right of the wife, as an undisclosed principal, to sue, and *Humble* v. *Hunter*, 12 Q. B. 310, 64 Eng. Com. L. was relied upon. See MECHEM ON AGENCY § 771. But the court held the case distinguishable, attaching importance to the use of the words "your town" as showing that the expression "your roof" was not intended to be exclusive and final.

AGENCY—AUTHORITY TO SELL LAND—NOTICE OF REVOCATION BY RECORD.—The defendant gave a written description of the land with a stated price to his agent, instructing him to sell the property. The price was after-